IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1144 OF 2003

SANDEEP @ SANJAY VITTHAL SHINDE
Age: 26 years, Occ: Agriculturist,
r/o. Karkhel, Tal Baramati,
District - Pune. ...Appellant
(At present District Prison
Baramati)

V/s

STATE OF MAHARASHTRA ...Respondent.

Mr. Milind Deshmukh for the appellant.

Mr. D.P. Adsule, APP for the respondent - State.

CORAM: V.M.KANADE,J.

DATE: 15th September, 2004

ORAL JUDGMENT:

1. Appellant is challenging the judgment and Order dated 16/09/2003 passed by the Additional Sessions Judge, Baramati in Sessions Case No.69 of 2002 whereby the appellant was convicted under section 376 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and to pay fine of Rs 500/- and in default to suffer R.I. for two months. He was also sentenced by the Trial Court to suffer R.I. for two years for the offence punishable under section 506 of the Indian Penal Code.

2. Prosecution's case is that the prosecutrix Sneha was married with P.W.1 - Ganpat three years before the

incident and she was residing with her minor son Sahil, husband, in-laws at Karkhel, Taluka Baramati, District - Pune. Her husband was in the business of construction and he used to go to Baramati in the morning and come back in the evening. The accused was the unmarried cousin of the husband of the prosecutrix and he was residing with his parents in the neighbourhood. On 6/6/2002, a complaint was lodged at 11.15 p.m. that after her husband had gone to Baramati, she noticed that she had an abdominal pain and, therefore, she decided to go to Baramati to the Hospital of Dr. Sunil Shah by bus and was waiting at Bhigwan Chowk when the accused came near her on the motor-cycle and told her that he wanted to talk to her and he asked her to sit on his motor-cycle. She, therefore, sat on the rear side of his motor-cycle. Prosecution's case is that the prosecutrix told him that she wanted to go to Dr Shah's hospital. However, he took her to a sugar-cane field and threatened her that he would kill her son and family and, thereafter, he raped her. According to the prosecutrix, the incident took place at 1.30 p.m. She was frightened. She was dropped at the Baramati Bus Stand by the accused and, thereafter, she came home and narrated the incident to her in-laws. A complaint was registered under section 376 of the Indian Penal Code.

The accused was arrested. His clothes were seized and sent to the Chemical Analyser. Similarly, the clothes of the prosecutrix were also seized and the samples of blood, blood-swabs were sent to Chemical Analyser, Pune. Motor-cycle of the accused was seized. Charge-sheet was filed. The Trial Court convicted the accused under section 376 and sentenced him to suffer R.I. for 7 years.

3. The learned Counsel appearing on behalf of the appellant has submitted that no external injuries were found on the person of the prosecutrix. He submitted that it is difficult to accept her evidence particularly when she, on her own, had accompanied the accused and she had not resisted when he had taken her to the opposite direction to a sugar-cane field. It is submitted that the Chemical Analyser's report also does not support the case of the prosecution.

4. Prosecution has examined 8 witnesses. The Chemical Analyser's report at Exhibit-12 shows that there were blood stains and the semens on the clothes of the prosecutrix. However, the report states that result of the group of blood and semen was inconclusive. Similarly, analysis of the blood of the accused was also inconclusive. The other evidence

which is brought on record by the prosecution is a circumstantial evidence. The only question is whether the evidence of the prosecutrix alone is sufficient to implicate the accused. The Apex Court has held that the accused can be convicted on the sole testimony of the prosecutrix. In the present case, the evidence of P.W.1 - Ganpat Shinde, husband of the prosecutrix, reveals that when he came home he was informed by his wife that the accused had raped her in a sugar-cane field and, therefore, a complaint was lodged. His evidence, therefore, is circumstantial evidence and refers to what transpired after he came home. Similarly, evidence of P.W. 2 - Parvati Shinde who is the mother-in-law of the prosecutrix also is to the effect that when the prosecutrix came home, she was weeping and she told that the accused had raped her in the sugar-cane field. The crucial evidence, therefore, is of prosecutrix P.W. 5 - Sneha Ganpat Shinde. She has stated that while she was waiting on the bus stop at Baramati, accused came on motor-cycle and told her that he wanted to tell her some thing and, therefore, she sat on the motor-cycle. She further stated that accused had taken her towards Indapur Road at Baramati. She has further stated that she told the accused that she wanted to go to the hospital of Dr. Shah and inquired with him where he

was taking her. At that time, the accused told her that the road goes to the hospital. According to her, thereafter, he had taken the motor-cyle towards the left of the road in the sugar-cane field and he got down from the motor-cycle and threatened to kill her son and family and told her that he wanted to satisfy his lust. He, therefore, made her sleep in the sugar-cane crop, removed her underwear and committed rape on her. Thereafter, he again took her to the Bus Stand at Baramati. She went home and informed her in-laws and informed her husband on telephone at Baramati. From the testimony of the said witness, it is difficult to accept her story. She had accompanied the accused on his motor-cycle. She was aware of the location of Dr Shah's hospital. She knew that the accused was taking her in a different direction. At that time, accused had not threatened her. She could have asked him to stop the motor-cycle or could have raised hue and cry. From the spot panchanama, it appears that even sugar-cane field is near the hotel and in the midst of the residential area. The prosecutrix has not stated that the accused had threatened her by showing any weapon such as knife. The prosecutrix did not offer any resistance whatsoever. The medical certificate shows that there were no injuries on her private parts or no scratches

on her back or legs. The Chemical Analyser's report also does not support the prosecution's case as the blood group and the semens which were found on the clothes of the prosecutrix are inconclusive. The report shows that the analysis is inconclusive. After the incident had taken place, the prosecutrix was again taken on the motor-cycle by the accused and she was dropped at the Baramati. Prosecutrix is a grown up lady and was 20 years old when the incident took place and she could have resisted. The accused in his statement has stated that there was an enmity between the complainant and his family over the agricultural land and that he was selected and recruited by the army and six months before the incident complaints were filed by both the parties against each other in respect of the boundary dispute. Thus, in my view, it is difficult to accept the solitary evidence of the prosecutrix and the accused is entitled to be given a benefit of doubt. Accordingly, the following order is passed:-

O R D E R

. Accused is acquitted of the offence under section 376 read with section 506 of the I.P.C. with which he was charged.

. Appellant to be released forthwith unless he is otherwise required in any other case.

. Appeal is allowed.

V.M. KANADE, J.